

PETER M. HART (California Bar No. 198691)

**LAW OFFICES OF PETER M. HART**

13952 Bora Bora Way, F-320

Marina Del Rey, CA 90292

Telephone: (310) 478-5789

Facsimile: (509) 561-6441

KENNETH H. YOON (California Bar No. 198443)

**LAW OFFICES OF KENNETH H. YOON**

One Wilshire Blvd., Suite 2200

Los Angeles, California 90017-3383

Telephone: (213) 612-0988

Facsimile: (213) 947-1211

LARRY W. LEE (California Bar No. 228175)

**DIVERSITY LAW GROUP, A Professional Corporation**

444 S. Flower St., Suite 1370

The Citigroup Building

Los Angeles, CA 90071

Telephone: (213) 488-6555

Facsimile: (213) 488-6554

Attorneys for Plaintiff Shameika Moody

**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SHAMEIKA MOODY, as an individual and  
on behalf of others similarly situated,

Plaintiff,

vs.

CHARMING SHOPPES OF DELAWARE,  
INC., a corporation; LANE BRYANT,  
INC., a corporation; CHARMING  
SHOPPES, INC. a corporation, and DOES 1  
through 20, inclusive,

Defendants.

Case No.: C 07-06073 MHP

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE RELIEF  
FOR:**

**(1) FAILURE TO PAY OVERTIME  
WAGES;**

**(2) VIOLATION OF LABOR CODE §  
203;**

**(3) VIOLATION OF LABOR CODE §  
226.7;**

- (4) FRAUD;
- (5) VIOLATION OF LABOR CODE § 226;
- (6) UNFAIR BUSINESS PRACTICES (Violation of California Business & Professions Code §17200 et seq.).

**DEMAND FOR JURY TRIAL**

Plaintiff Shameika Moody (hereinafter referred to as “Plaintiff”), hereby submits her class action complaint against Defendants CHARMING SHOPPES OF DELAWARE, INC., LANE BRYANT, INC., CHARMING SHOPPES, INC. and DOES 1-20 (hereinafter collectively referred to as “DEFENDANTS”) on behalf of herself and the class of all other similarly situated current and former employees of DEFENDANTS for overtime wages owed, meal period wages, waiting time penalties, and penalties or damages for failure to keep accurate records, restitution and injunctive relief as follows:

**INTRODUCTION**

1. This class action is within the Court’s jurisdiction under California Labor Code §§ 201-204, 226, 226.7, 1194, and California Business and Professions Code § 17200, et seq., (Unfair Practices Act).

2. This complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code and Business and Professions Code against employees of DEFENDANTS.

3. Plaintiff is informed and believes and based thereon alleges DEFENDANTS, joint and severally have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees in receiving all overtime wages due at the proper rate of overtime pay, all final wages due upon termination of employment, and in connection with DEFENDANTS’ failure to keep all proper pay roll records of Plaintiff and Class Members.

4. Plaintiff is informed and believes and based thereon alleges DEFENDANTS have engaged in, among other things a system of willful violations of the California Labor Code,

1 Business and Professions Code and applicable IWC wage orders by creating and maintaining  
2 policies, practices and customs that knowingly deny employees the above stated rights and  
3 benefits.

4       **5.** The policies, practices and customs of defendants described above and below have  
5 resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over  
6 businesses that routinely adhere to the strictures of the California Labor Code, Business and  
7 Professions Code.

### 8 **JURISDICTION AND VENUE**

9       **6.** The Court has jurisdiction over the violations of the California Labor Code §§ 201-  
10 204, 226, 226.7, 1194 and California Business and Professions Code § 17200, et seq., (Unfair  
11 Practices Act).

12       **7.** This Court has jurisdiction over Defendant Charming Shoppes of Delaware, Inc. as it  
13 represents that it is the employer of Plaintiff, it purposefully directs into California wage  
14 statements / paycheck paystubs to Plaintiff and thousands of California workers, including  
15 directing fraudulent wage statements, it purposefully directs into California payment of millions  
16 of dollars of wages to Plaintiff and to thousands of other California workers and makes payment  
17 of millions of dollars to California for employee payroll taxes and for employee State Disability  
18 payments, it works as a joint venturer, co-conspirator, and agent and principal with Lane Bryant,  
19 Inc. to get benefits from thousands of contacts with California resident workers and with  
20 California resident consumers.

21       **8.** This Court has jurisdiction over Lane Bryant, Inc. as it is the admitted employer of  
22 Plaintiff and the class members numbering in the thousands, as well as operating dozens of stores  
23 in California, having managerial employees in California, is in wholesale violation of Labor  
24 Code Section 226 and thus on a daily basis falsely representing its status.

25       **9.** This Court has jurisdiction over Charming Shoppes, Inc. as it is the parent owner of  
26 the wholly-owned subsidiary, Lane Bryant, Inc. and Charming Shoppes of Delaware, Inc., that  
27 the acts and the contacts of Lane Bryant, Inc. and Charming Shoppes of Delaware, Inc. can be  
28

1 imputed to Charming Shoppes, Inc., and that Charming Shoppes, Inc. is a joint venturer, co-  
 2 conspirator, principal, joint employer and integrated employment enterprise of Plaintiff and the  
 3 class members and of all of the employees of Lane Bryant, Inc. and the other sister subsidiaries  
 4 of Lane Bryant, Inc., having shared workers, shared managerial workers, shared human  
 5 resources functions, handbooks, headquarters, and shares headquarters offices in Pennsylvania,  
 6 wholly owns the subsidiaries such as Lane Bryant, Inc.

7 **10.** Venue is proper because the DEFENDANTS do business in California and in San  
 8 Francisco County.

### 9 **PARTIES**

10 **11.** Plaintiff SHAMEIKA MOODY was employed by DEFENDANTS from November  
 11 2006 until on or about July 2, 2007 as an assistant manager at one of DEFENDANTS' Lane  
 12 Bryant retail stores in Pleasanton, California, which is a property owned and/or operated by  
 13 DEFENDANTS. Plaintiff was and is the victim of the policies, practices, and customs of  
 14 DEFENDANTS complained of in this action in ways that have deprived her of the rights  
 15 guaranteed to her by California Labor Code §§ 201-204, 226, 226.7, 1194, and California  
 16 Business and Professions Code §17200, et seq., (Unfair Practices Act).

17 **12.** Plaintiff is informed and believes and based thereon alleges Defendant  
 18 CHARMING SHOPPES OF DELAWARE, INC. (hereafter "CHARMING SHOPPES OF  
 19 DELAWARE") was and is a corporation doing business in the State of California with retail  
 20 stores in California and across the United States, employing thousands of California employees  
 21 and paying wages in the millions of dollars to thousands of California employees and millions of  
 22 dollars in California state payroll taxes to the State of California; Defendant LANE BRYANT,  
 23 INC. (hereafter "LANE BRYANT") was and is a corporation doing business in the State of  
 24 California and employing thousands of employees in California; Defendant CHARMING  
 25 SHOPPES, INC. was and is a corporation doing business in California, and jointly employing  
 26 thousands of California employees in California including, but not limited to, employees at the  
 27 retail stores operated under the wholly owned subsidiary companies of Lane Bryant, Fashion  
 28

1 Bug, Catherines Plus Sizes, Petite Sophisticate Outlet, and Crosstown Traders, selling clothing  
2 and clothing accessories to the public on the retail level, including owning and operating retail  
3 stores in San Francisco County, California—collectively these above Defendants will be referred  
4 to hereafter as “DEFENDANTS”.

5 **13.** Plaintiff is informed and believes and thereon alleges that at all times herein  
6 mentioned DEFENDANTS and DOES 1 through 20, are and were corporations, business  
7 entities, individuals, and partnerships, licensed to do business and actually doing business in the  
8 State of California.

9 **14.** As such, and based upon all the facts and circumstances incident to  
10 DEFENDANTS’ business in California, DEFENDANTS are subject to California Labor Code  
11 §§ 201-204, 226, 226.7, 1194 and California Business and Professions Code § 17200, et seq.,  
12 (Unfair Practices Act).

13 **15.** Plaintiff does not know the true names or capacities, whether individual, partner  
14 or corporate, of the DEFENDANTS sued herein as DOES 1 through 20, inclusive, and for that  
15 reason, said DEFENDANTS are sued under such fictitious names, and Plaintiff prays for leave to  
16 amend this complaint when the true names and capacities are known. Plaintiff is informed and  
17 believes and thereon alleges that each of said fictitious DEFENDANTS was responsible in some  
18 way for the matters alleged herein and proximately caused Plaintiff and members of the general  
19 public and class to be subject to the illegal employment practices, wrongs and injuries  
20 complained of herein.

21 **16.** At all times herein mentioned, each of said DEFENDANTS participated in the  
22 doing of the acts hereinafter alleged to have been done by the named DEFENDANTS; and  
23 furthermore, the DEFENDANTS, and each of them, were the agents, servants and employees of  
24 each of the other DEFENDANTS, as well as the agents of all DEFENDANTS, and at all times  
25 herein mentioned, were acting within the course and scope of said agency and employment.

26 **17.** Plaintiff is informed and believes and based thereon alleges that at all times  
27 material hereto, each of the DEFENDANTS named herein was the agent, employee, alter ego  
28

1 and/or joint venturer of, or working in concert with each of the other co-DEFENDANTS and was  
2 acting within the course and scope of such agency, employment, joint venture, or concerted  
3 activity. To the extent said acts, conduct, and omissions were perpetrated by certain  
4 DEFENDANTS, each of the remaining DEFENDANTS confirmed and ratified said acts,  
5 conduct, and omissions of the acting DEFENDANTS.

6 **18.** At all times herein mentioned, DEFENDANTS, and each of them, were members  
7 of, and engaged in, a joint venture, partnership and common enterprise, and acting within the  
8 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

9 **19.** At all times herein mentioned, the acts and omissions of various DEFENDANTS,  
10 and each of them, concurred and contributed to the various acts and omissions of each and all of  
11 the other DEFENDANTS in proximately causing the injuries and damages as herein alleged. At  
12 all times herein mentioned, DEFENDANTS, and each of them, ratified each and every act or  
13 omission complained of herein. At all times herein mentioned, the DEFENDANTS, and each of  
14 them, aided and abetted the acts and omissions of each and all of the other DEFENDANTS in  
15 proximately causing the damages as herein alleged.  
16

### 17 **CLASS ACTION ALLEGATIONS**

18 **20. Definition:** The named individual Plaintiff bring this action on behalf of herself  
19 and the class pursuant to California Code of Civil Procedure § 382. This action consists of the  
20 following Classes of employees (1) all of DEFENDANTS' past and present non-exempt  
21 employees employed in California during the period from October 11, 2003 to the present who  
22 were paid overtime wages and who were paid any form of incentive pay or were paid any form  
23 of non-discretionary bonuses, including sales bonuses and/or sales commissions, (2) all of  
24 DEFENDANTS' past and present non-exempt employees employed in California during the  
25 period from October 11, 2003 to the present who worked more than 5 hours in a shift; (3) all  
26 California persons to whom DEFENDANT CHARMING SHOPPES OF DELAWARE, INC.  
27 sent wage statements to during the period from October 11, 2003 to the present on which the  
28 wage statements set forth the name of Charming Shoppes of Delaware, Inc. and its address.

1           **21. Numerosity:** The members of the class are so numerous that joinder of all  
 2 members would be impractical, if not impossible. The identity of the members of the class is  
 3 readily ascertainable by from DEFENDANTS' records, including payroll records and time  
 4 records. Plaintiff is informed and believes and based thereon alleges that DEFENDANTS failed  
 5 to (a) pay to Plaintiff and the class all overtime wages owed at the proper rate of overtime pay,  
 6 (b) pay to Plaintiff and the class all final wages upon termination of employment, (c) provide  
 7 proper meal periods in violation of Labor Code § 226.7, (d) keep proper payroll records in  
 8 violation of Labor Code § 226 for Plaintiff and the class, (e) defrauded Plaintiff and members of  
 9 the class numbering in the thousands through fraudulent statements, and (f) engaged in Unfair  
 10 Business Practices, all in violation of IWC Wage Order No 7-2001.

11           **22. Adequacy of Representation:** The named Plaintiff is fully prepared to take all  
 12 necessary steps to represent fairly and adequately the interests of the class defined above.  
 13 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and  
 14 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class  
 15 actions in the past, have been appointed as class counsel by California courts, and currently have  
 16 a number of wage-and-hour class actions pending in California state and federal courts.

17           **23.** DEFENDANTS uniformly administered a corporate policy, practice of failing to  
 18 (a) pay to Plaintiff and the class all overtime wages owed at the proper rate of overtime pay by  
 19 failing to include all non-discretionary bonuses, commissions, and other incentive pay into the  
 20 calculation and payment of overtime wages, (b) provide or allow Plaintiff to take meal periods in  
 21 compliance with California Labor Code 226.7 and applicable IWC Wage Orders (c) to Plaintiff  
 22 and the class all final wages upon termination of employment, (d) keep proper payroll records in  
 23 violation of Labor Code § 226 for Plaintiff and the class, (e) defrauded Plaintiff and members of  
 24 the class through fraudulent representations, and (f) engaged in Unfair Business Practices, all in  
 25 violation of IWC Wage Orders.

26           **24.** Plaintiff is informed and believes and based thereon alleges that DEFENDANTS,  
 27 in violation of California Labor Code §§ 201 to 204, and 1194, respectfully, had a consistent and  
 28



1 uniform policy, practice of willfully failing to comply with Labor Code § 203. Plaintiff and  
2 other members of the class did not secret or absent themselves from DEFENDANTS, nor refuse  
3 to accept the earned and unpaid wages from DEFENDANTS. Accordingly, DEFENDANTS are  
4 liable for waiting time compensation for the unpaid wages to separated employees pursuant to  
5 California Labor Code § 203.

6 **25. Common Question of Law and Fact:** There are predominant common questions  
7 of law and fact and a community of interest amongst Plaintiff and the claims of the class  
8 concerning DEFENDANTS' failure to (a) pay to Plaintiff and the class all overtime wages owed  
9 at the proper rate of overtime pay by failing to include all paid non-discretionary bonuses,  
10 commissions, and other incentive pay into the calculation and payment of overtime wages, (b)  
11 pay to Plaintiff and the class all final wages upon termination of employment, (c) provide proper  
12 meal periods in violation of Labor Code § 226.7, (d) keep proper payroll records in violation of  
13 Labor Code § 226, (e) defrauded Plaintiff and members of the class by fraudulent  
14 representations, and (f) engaged in Unfair Business Practices, all in violation of IWC Wage  
15 Order No 7-2001.

16 **26. Typicality:** The claims of Plaintiff are typical of the claims of all members of the  
17 class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical  
18 manner as the class members. Plaintiff is a member of the Classes and has suffered the alleged  
19 violations of California Labor Code §§ 201-204, 226, 226.7, 1194 and IWC Wage Order No. 7-  
20 2001 set forth in this Complaint and were defrauded by Defendant Charming Shoppes of  
21 Delaware, Inc. in the exact same fashion and manner, uniformly by fraudulent written  
22 representations. Plaintiff and the class members were entitled to rely on and did rely on these  
23 fraudulent statements and representations of Defendant Charming Shoppes of Delaware, Inc.

24 **27.** The California Labor Code and Civil Code and common law upon which Plaintiff  
25 bases her claims are broadly remedial in nature. These laws and labor standards serve an  
26 important public interest in establishing minimum working conditions and standards in  
27 California. These laws and labor standards protect the average working employee from  
28



1 exploitation by employers who may seek to take advantage of superior economic and bargaining  
2 power in setting onerous terms and conditions of employment.

3       **28.** The nature of this action and the format of laws available to Plaintiff and  
4 members of the class identified herein make the class action format a particularly efficient and  
5 appropriate procedure to redress the wrongs alleged herein. If each employee were required to  
6 file an individual lawsuit, the corporate DEFENDANTS would necessarily gain an  
7 unconscionable advantage since it would be able to exploit and overwhelm the limited resources  
8 of each individual plaintiff with their vastly superior financial and legal resources. Requiring  
9 each class member to pursue an individual remedy would also discourage the assertion of  
10 lawful claims by employees who would be disinclined to file an action against their former  
11 and/or current employer for real and justifiable fear of retaliation and permanent damage to their  
12 careers at subsequent employment.

13       **29.** The prosecution of separate actions by the individual class members, even if  
14 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect  
15 to individual class members against the DEFENDANTS and which would establish potentially  
16 incompatible standards of conduct for the DEFENDANTS, and/or (b) adjudications with respect  
17 to individual class members which would, as a practical matter, be dispositive of the interest of  
18 the other class members not parties to the adjudications or which would substantially impair or  
19 impede the ability of the class members to protect their interests. Further, the claims of the  
20 individual members of the class are not sufficiently large to warrant vigorous individual  
21 prosecution considering all of the concomitant costs and expenses.

22       **30.** Such a pattern, practice and uniform administration of corporate policy regarding  
23 illegal employee compensation described herein is unlawful and creates an entitlement to  
24 recovery by the Plaintiff and the class identified herein, in a civil action, for the unpaid balance  
25 of the full amount unpaid overtime, meal period premiums,,including interest thereon, applicable  
26 penalties, reasonable attorney's fees, and costs of suit according to the mandate of California  
27 Labor Code §§ 226 and 1194 and Code of Civil Procedure § 1021.5.  
28



1 discretionary bonuses, sales bonuses, and/or sales commissions and other incentive pay into the  
2 regular rate when calculating and paying Plaintiff and DEFENDANTS' other non-exempt  
3 California employees proper overtime compensation for daily and weekly overtime hours  
4 worked at the appropriate overtime rate.

5 **38.** Plaintiff is informed and believes and based thereon alleges that DEFENDANTS'  
6 policy and practice of requiring overtime work and not paying for said work according to the  
7 overtime mandates of California law is, and at all times herein mentioned was in violation of  
8 California Labor Code § 1194 and California Industrial Welfare Commission wage order(s).  
9 DEFENDANTS' employment policies and practices wrongfully and illegally failed to  
10 compensate Plaintiff and the class for overtime compensation earned as required by California  
11 law.

12 **39.** The conduct of DEFENDANTS and their agents and employees as described  
13 herein was willful and intentional and part of a corporate policy and procedure and practice.

14 **40.** Plaintiff is informed and believes and based thereon alleges that DEFENDANTS  
15 willfully failed to pay employees proper compensation for all overtime hours worked at the  
16 appropriate rate of overtime pay. Plaintiffs are informed and believe and based thereon allege  
17 that DEFENDANTS' willful failure to provide all overtime wages due and owing them upon  
18 separation from employment results in a continued payment of wages up to thirty (30) days from  
19 the time the wages were due. Therefore, Plaintiff and other members of the class who have  
20 separated from employment are entitled to compensation pursuant to Labor Code § 203.

21 **41.** Such a pattern, practice and uniform administration of corporate policy regarding  
22 illegal employee compensation as described herein is unlawful and creates an entitlement to  
23 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of overtime  
24 premiums owing, including interest thereon, penalties, attorneys fees, and costs of suit according  
25 to the mandate of California Labor Code § 1194, et seq.  
26  
27  
28

**SECOND CAUSE OF ACTION**

**VIOLATION OF LABOR CODE § 203**

**(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

42. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 41 as though fully set for herein.

43. At all times relevant herein, DEFENDANTS were required to pay their non-exempt hourly employees all wages owed in a timely fashion at the end of employment pursuant to California Labor Code §§ 201 to 204.

44. As a pattern and practice, DEFENDANTS regularly failed to pay Plaintiff and class members their final wages, including all overtime wages and meal period wages, pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

45. The conduct of DEFENDANTS and their agents and employees as described herein was willfully done in violation of Plaintiff's and class members' rights, and done by managerial employees of DEFENDANTS.

46. Plaintiff is informed and believes and based thereon alleges DEFENDANTS' willful failure to provide all overtime wages and meal period wages due and owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members of the class who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

**THIRD CAUSE OF ACTION**

**FOR VIOLATION OF LABOR CODE § 226.7 REGARDING MEAL PERIODS**

**(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

47. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 46 as though fully set for herein.

48. DEFENDANTS failed in their affirmative obligation to ensure that all of their employees, including Plaintiff, and other members of the class, had the opportunity to take and

1 were provided with all proper meal periods in accordance with the mandates of the California  
2 Labor Code and the applicable IWC Wage Order. Plaintiff and the class were suffered and  
3 permitted to work through legally required meal breaks and were denied the opportunity to take  
4 their meal breaks. As such, DEFENDANTS are responsible for paying premium compensation  
5 for missed meal periods pursuant to Labor Code § 226.7 and IWC Wage Order No. 7 § 11(B)  
6 and have failed to pay this compensation. DEFENDANTS shall pay the each affected employee  
7 one (1) hour of pay at the employee's regular rate of compensation for each workday that the  
8 meal break was not provided and or denied.

9       **49.** Plaintiff and class members regularly worked in excess of five (5) hours per day  
10 and accordingly had a right to take a 30-minute meal period each day worked in excess of five  
11 (5) hours. Furthermore, Plaintiff and class members who worked in excess of ten (10) hours per  
12 day had a right to take a second 30-minute meal period each day worked in excess of ten (10)  
13 hours.

14       **50.** As a pattern and practice, DEFENDANTS regularly required employees to work  
15 through their meal periods without proper compensation and denied Plaintiff and their employees  
16 the right to take proper meal periods as required by law and DEFENDANTS failed to keep  
17 accurate records of meal breaks taken.

18       **51.** This policy of requiring employees to work through their legally mandated meal  
19 periods and not allowing them to take proper meal periods is a violation of California law.

20       **52.** Plaintiff is informed and believes and based thereon alleges that DEFENDANTS  
21 willfully failed to pay employees who were not provided the opportunity to take meal breaks the  
22 premium compensation set out in Labor Code § 226.7 and IWC Wage Order No. 7 § 11(B) and  
23 that Plaintiff and those employees similarly situated as her are owed wages for the meal period  
24 violations set forth above. Plaintiff is informed and believes and based thereon alleges  
25 DEFENDANTS' willful failure to provide Plaintiff and other members of the class the wages  
26 due and owing them upon separation from employment results in a continued payment of wages  
27 up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members  
28

1 of the class who have separated from employment are entitled to compensation pursuant to Labor  
2 Code § 203.

3 **53.** Such a pattern, practice and uniform administration of corporate policy as  
4 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the class  
5 identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation  
6 pursuant to Labor Code § 226.7 and IWC Wage Order No. 7 § 11(B), including interest thereon,  
7 penalties, reasonable attorney's fees, and costs of suit.

8 **FOURTH CAUSE OF ACTION**

9 **FOR FRAUD**

10 **(AGAINST DEFENDANT CHARMING SHOPPES**

11 **OF DELAWARE, INC. BY PLAINTIFF)**

12 **54.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 53 as  
13 though fully set for herein.

14 **55.** Defendant Charming Shoppes of Delaware, Inc. directed into California written  
15 wage statements / paycheck paystubs ("wage statements") to Plaintiff when it paid her wages  
16 while she worked at Lane Bryant, Inc. Such wage statements are mandated by California Labor  
17 Code Section 226 when an employer pays wages to its employees.

18 **56.** Defendant Charming Shoppes of Delaware, Inc. on a corporate and managerial  
19 level (managers and officers known to Defendant), uniformly, intentionally, and knowingly  
20 represented on each of these wage statement that were directed to Plaintiff on her pay periods  
21 (dates of each such false representation are known to Defendant and each representation is  
22 known to Defendant) and similarly to the class of employees she represents, that it was the  
23 employer of Plaintiff and the class members. Each of these uniform corporate-level written  
24 representations of Defendant Charming Shoppes of Delaware, Inc. on the wage statements that it  
25 was the employer, by its own admission were and are false.

26 **57.** Plaintiff reasonably relied on these false representations of Defendant Charming  
27 Shoppes of Delaware, Inc. and had no reason to doubt this false representation or to believe that  
28

1 it was false at the time she relied on it.

2       **58.** Plaintiff in relying on these false representations of Charming Shoppes of  
3 Delaware, Inc. was harmed and suffered injury and damages.

4       **59.** Plaintiff seeks for herself and the class she represents, damages, including  
5 consequential and punitive and exemplary damages against Charming Shoppes of Delaware, Inc.  
6 Punitive and exemplary damages are warranted against Charming Shoppes of Delaware, Inc. as  
7 its actions, as set forth above, were done with fraud, malice, and oppression to support the award  
8 of punitive damages.

9                                   **FIFTH CAUSE OF ACTION**

10       **FOR VIOLATION OF LABOR CODE § 226 REGARDING RECORD KEEPING**  
11                   **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

12       **60.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 59 as  
13 though fully set for herein.

14       **61.** DEFENDANTS failed in their affirmative obligation to keep accurate records  
15 regarding the the name of the employer, rates of pay and the total amount of compensation and  
16 wages of their California employees in pay periods. DEFENDANTS, as a matter of policy and  
17 practice, did not and do not maintain accurate records in violation of Labor Code § 226 by failing  
18 as a matter of uniform policy, practice and procedure state the legal name and address of the  
19 entity who is the employer of Plaintiff and the class members, including specifically Lane  
20 Bryant, Inc.'s failure to state on Plaintiff's and class members' wage statements that it is the  
21 employer of Plaintiff and these class members, failing to keep accurate records of Plaintiff's and  
22 the class members' rates of pay, by failing to include all earned non-discretionary bonuses,  
23 commissions, and other incentive wages of Plaintiff and class members, by failing to keep  
24 accurate records of rates of overtime pay, by failing to include all earned non-discretionary  
25 bonuses, commissions, and other incentive pay, net wages earned, daily or weekly overtime pay,  
26 taxes being withheld, Social Security taxes being paid, and by failing to keep accurate records of  
27 hours worked in pay periods.  
28



1           **62.**     Such a pattern, practice and uniform administration of corporate policy as  
 2 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the class  
 3 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,  
 4 including interest thereon, attorney's fees, and costs of suit according to the mandate of  
 5 California Labor Code § 226.

6           **63.**     DEFENDANTS' wrongful and illegal conduct in failing to accurately record the  
 7 hours worked in accordance with Labor Code § 226 despite the clear legal obligation to do so,  
 8 unless and until enjoined and restrained by order of this court, will cause great and irreparable  
 9 injury to Plaintiff and all members of the class in that the DEFENDANTS will continue to  
 10 violate these California laws, represented by labor statutes, unless specifically ordered to comply  
 11 with same. This expectation of future violations will require current and future employees to  
 12 repeatedly and continuously seek legal redress in order to gain compensation to which they are  
 13 entitled under California law. Plaintiff has no other adequate remedy at law to insure future  
 14 compliance with the California labor laws and wage orders alleged to have been violated herein.  
 15

#### 16                           **SIXTH CAUSE OF ACTION**

#### 17                   **FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.**

#### 18                           **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

19           **64.**     Plaintiff re-alleges and incorporates by reference paragraphs 1 through 63 as  
 20 though fully set for herein.

21           **65.**     DEFENDANTS, and each of them, have engaged and continue to engage in unfair  
 22 and unlawful business practices in California by practicing, employing and utilizing the  
 23 employment practices outlined above, include, to wit, by failing to (a) pay Plaintiff and the class  
 24 all overtime wages owed at the proper rates of overtime pay and (b) pay Plaintiff and the class all  
 25 wages owed of meal periods not properly taken and denied, and (c) failing to state on wage  
 26 statements / paycheck paystubs the name of the legal entity who is the employer of Plaintiff in  
 27 violation of and the class members, including specifically Lane Bryant, Inc.'s failure to state on  
 28 Plaintiff's and class members' wage statements that it is the employer of Plaintiff and these class

1 members.

2       **66.** Further, Defendant CHARMING SHOPPES OF DELAWARE, INC. engaged and  
 3 engages in misleading, fraudulent, unfair, and unlawful business practices in, by its admission,  
 4 stating on Labor Code 226 wage statements / paycheck paystubs that it is the employer of  
 5 Plaintiff and the class members who worked at Lane Bryant, Inc. when it actually contends that it  
 6 is not the employer of Plaintiff and the class members who worked at Lane Bryant, Inc.

7       **67.** DEFENDANTS' utilization of such unfair and unlawful business practices  
 8 constitutes unfair, unlawful competition and provides an unfair advantage over DEFENDANTS'  
 9 competitors.

10       **68.** Plaintiff seeks, on her own behalf, on behalf of other members of the class  
 11 similarly situated, full restitution of monies, as necessary and according to proof, to restore any  
 12 and all monies withheld, acquired and/or converted by the DEFENDANTS by means of the  
 13 unfair practices complained of herein.

14       **69.** Plaintiff seeks, on her own behalf, on behalf of other members of the class  
 15 similarly situated, an injunction to prohibit DEFENDANTS from continuing to engage in the  
 16 unfair business practices complained of herein.

17       **70.** Plaintiff is informed and believes and on that basis alleges that at all times herein  
 18 mentioned DEFENDANTS have engaged in unlawful, deceptive and unfair business practices,  
 19 as proscribed by California Business and Professions Code § 17200 et seq., including those set  
 20 forth herein above thereby depriving Plaintiff and other members of the class the minimum  
 21 working condition standards and conditions due to them under the California laws and Industrial  
 22 Welfare Commission wage orders as specifically described therein.

### 23 **PRAYER FOR RELIEF**

24       WHEREFORE, Plaintiff SHAMEIKA MOODY prays for judgment for herself and all others  
 25 on whose behalf this suit is brought against DEFENDANTS, jointly and severally, as follows:

- 26 1. For an order certifying the proposed class;
- 27 2. For an order appointing Plaintiff as the representative of the class;
- 28

3. For an order appointing Counsel for Plaintiff as class counsel;
4. Upon the First Cause of Action, for wages and consequential damages according to proof, and for waiting time penalties according to proof pursuant to California Labor Code § 203;
5. Upon the Second Cause of Action, for waiting time penalties according to proof pursuant to California Labor Code § 203;
6. Upon the Third Cause of Action, for wages owed for meal periods and for waiting time penalties according to proof pursuant to California Labor Code § 203;
7. Upon the Fourth Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code § 226, and for costs and attorney's fees;
8. Upon the Fifth Cause of Action, for restitution to Plaintiff and other similarly effected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 et seq., for an injunction to prohibit Defendants to engage in the unfair business practices complained of herein, for an injunction requiring Defendants to give notice to persons to whom restitution is owing of the means by which to file for restitution;
9. On all causes of action for attorneys fees and costs as provided by California Labor Code §§ 226 & 1194 and Code of Civil Procedure § 1021.5 and for such other and further relief the Court may deem just and proper.

**Dated: January 18, 2008**

**LAW OFFICES OF PETER M. HART**

By:                     /s/                      
**Peter M. Hart, Esq.**  
**Attorney for Plaintiff**

**DEMAND FOR JURY TRIAL**

Plaintiff, for herself and the class, hereby demands a jury trial as provided by California law.

**DATED: January 18<sup>th</sup>, 2008**

**LAW OFFICES OF PETER M. HART**

By:                     /s/                      
**Peter M. Hart**  
**Attorney for Plaintiff**